



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 15-2

May 28, 2015

Petition of the State 911 Department to Adjust the Enhanced 911 Surcharge

INTERIM ORDER

APPEARANCES:

Frank Pozniak, Executive Director
Louise McCarthy, General Counsel
State 911 Department
1380 Bay Street, Building C
Taunton, MA 02780-1088
FOR: STATE 911 DEPARTMENT
Petitioner

Maura Healey, Attorney General
By: Donald W. Boecke,
Assistant Attorney General
Office of the Attorney General
Office of Ratepayer Advocacy
One Ashburton Place, 18th Floor
Boston, MA 02108
FOR: OFFICE OF THE ATTORNEY GENERAL
Intervenor

Benjamin J. Aron
Director, External & State Affairs
CTIA—The Wireless Association
1400 Sixteenth Street, N.W.
Washington, DC 20036
and
David W. Bogan
Tara L. Trifon
Locke Lord LLP
20 Church Street
Hartford, CT 06108
FOR: CTIA—THE WIRELESS ASSOCIATION
Intervenor

Stacey L. Parker
Comcast, Northeast Division
12 Tozer Road
Beverly, MA 01915
and
Kevin C. Conroy
Foley Hoag LLP
Seaport West, 155 Seaport Boulevard
Boston, MA 02210-2600
FOR: COMCAST PHONE OF MASSACHUSETTS,
INC.
Limited Participant

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 20, 2015, the State 911 Department (“911 Department”) petitioned the Department of Telecommunications and Cable (“DTC”) for approval of a proposed adjustment of the Enhanced 911 (“E911”) Surcharge for each subscriber or end user whose communication services are capable of accessing and utilizing the enhanced 911 system (“surcharge”) to \$1.25 from July 1, 2015, to June 30, 2016, to provide for expenses associated with 911 services.¹ *See* Petition of the State 911 Dep’t to Adjust the Enhanced 911 Surcharge at 1 (“Petition”). The DTC has ninety days to review and issue a final decision on the Petition before the 911 Department’s requests are deemed approved. *See* G.L. c. 6A, §§ 18B(i)(4), 18H(c).

The Attorney General of the Commonwealth of Massachusetts intervened in this proceeding as of right on March 31, 2015. Att’y Gen.’s Notice of Intervention (Mar. 31, 2015); *see also* G.L. c. 12, § 11E. The DTC issued its first set of Information Requests to the 911

¹ The 911 Department also requested DTC approval of a reduction of the surcharge to \$1.00, effective July 1, 2016, an increase of ten percent or more of the projected total expenditures for Fiscal Year (“FY”) 2015, and an increase of ten percent or more of the Incentive Grant regional emergency communication center (“RECC”) category amount for FY2015. *See* Petition at 1, 7 n.5, Exh. B. The DTC is reviewing these requests and will render decisions in its Final Order in this proceeding, to be issued no later than June 18, 2015. *See* G.L. c. 6A, § 18H(b).

Department on April 6, 2015. First Set of Info. Requests of the Dep't of Telecomms. & Cable to the State 911 Dep't (Apr. 6, 2015). The 911 Department filed its responses on April 21, 2015. Responses to First Set of Info. Requests of the Dep't of Telecomms. & Cable to the State 911 Dep't (Apr. 21, 2015). Written comments were filed by the Massachusetts Executive Office of Public Safety and Security, the Massachusetts Office on Disability, the Massachusetts Commission for the Deaf and Hard of Hearing, the Office of the Sheriff of Barnstable County, the Massachusetts Major Cities Chiefs Association, the Massachusetts Municipal Association, the Massachusetts Chiefs of Police Association, the Fire Chiefs' Association of Massachusetts, the Massachusetts Communications Supervisors Association, and CTIA—The Wireless Association ("CTIA"). Letter from Daniel Bennett, Sec'y, Mass. Executive Office of Pub. Safety & Sec., to Sara Clark, Sec'y, DTC (Apr. 29, 2015); Letter from David D'Arcangelo, Dir., Mass. Office on Disability, to Sara Clark, Sec'y, DTC (Apr. 28, 2015); Letter from Heidi L. Reed, Comm'r, Mass. Comm'n for the Deaf & Hard of Hearing, to Sara Clark, Sec'y, DTC (Apr. 28, 2015); Letter from James Cummings, Sheriff, Office of the Sheriff of Barnstable County, to Sara Clark, Sec'y, DTC (Apr. 28, 2015); Letter from Chief Brian A. Kyes, President, Mass. Major City Chiefs Assoc., to Sara Clark, Sec'y, DTC (Apr. 21, 2015); Letter from Geoffrey C. Beckwith, Executive Dir. & CEO, Mass. Mun. Assoc., to Sara Clark, Sec'y, DTC (Apr. 29, 2015); Letter from Chief Douglas Mellis, President, Mass. Chiefs of Police Assoc., to Sara Clark, Sec'y, DTC (Apr. 21, 2015); Letter from John J. Grant, President, Fire Chiefs Assoc. of Mass., to Sara Clark, Sec'y, DTC (Apr. 28, 2015); Letter from Lee Ann Delp, President, Mass. Commc'ns Supervisors Assoc., to Sara Clark, Sec'y, DTC (Apr. 15, 2015); Comments of CTIA (Apr. 29, 2015). On May 1, 2015, the DTC conducted public and evidentiary hearings on these

matters. Transcript of Evidentiary Hearing (“Tr.”). At the evidentiary hearing the DTC granted CTIA’s Petition for Leave to Intervene and Comcast Phone of Massachusetts, Inc.’s Motion for Limited Participant status. Tr. at 9. On May 7, 2015, the 911 Department responded to thirteen Record Requests issued by the DTC and one Record Request issued by CTIA at the evidentiary hearing. Responses to Records Requests of the Dep’t of Telecomms. & Cable to the State 911 Dep’t (May 7, 2015). The 911 Department filed a Motion for Confidential Treatment of its response to DTC Record Request 1-12 (“Motion”), which the DTC grants as stated below. *See infra* Section II.

Given the 911 Department’s requested effective date of July 1, 2015, for the proposed adjustment to the surcharge, the DTC determines that to ensure that E911 services,² grant programs, and disability access programs are funded and provisioned as of July 1, 2015, and to ensure that the Next Generation 911 (“NG 911”) project remains on track to be fully operational by June 30, 2016, the establishment of an interim surcharge is necessary, subject to adjustment pending the completion of the DTC’s investigation in this proceeding.

Accordingly, in this Interim Order, the DTC establishes an interim surcharge of \$1.25 for effect on July 1, 2015, pending completion of the DTC’s investigation in this proceeding.

II. MOTION FOR CONFIDENTIAL TREATMENT

The 911 Department filed the Motion on May 7, 2015, requesting confidential treatment of part of its response to DTC Record Request 1-12. Motion at 1. Specifically, the 911 Department requests confidential treatment of subscriber and end user information submitted to

² E911 services provide residents of the Commonwealth with the ability to reach emergency services by dialing the digits “9-1-1,” and are provisioned pursuant to G.L. c. 6A, §§ 18A–18J and G.L. c. 166, §§ 14A, 15E. E911 is distinguished from traditional 911 services in that E911 provides responders with both the telephone number used to place the 911 call, and information detailing the geographic origin of the call. *See* G.L. c. 6A, § 18A.

the 911 Department by communication service providers pursuant to G.L. c. 6A, § 18H (“Monthly Surcharge Reports”). *Id.* at 1-2. The 911 Department requests that the Monthly Surcharge Reports be returned to the 911 Department after the conclusion of the appeal period in this proceeding, or, alternatively, that the DTC withhold the Monthly Surcharge Reports from public disclosure and maintain them separately from the public record in perpetuity. *Id.* at 3. Additionally, the 911 Department requests that the DTC limit access to the Monthly Surcharge Reports to authorized staff solely for the purposes of this proceeding, and that the DTC provide notice to the 911 Department if the DTC receives a third party public records request for the Monthly Surcharge Reports. *Id.* at 4. The DTC grants the Motion as stated below.

Generally, documents and data received by the DTC are considered public records and therefore are to be made available for public review under a general statutory mandate. *See* G.L. c. 66, § 10; G.L. c. 4, § 7(26). “Public records” include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose unless such materials or data fall within [certain enumerated] exemptions.” G.L. c. 4, § 7(26). However, materials that are “specifically or by necessary implication exempted from disclosure by statute” are excluded from the definition of “public records.” *Id.* § 7(26)(a).

The 911 Department states that the Monthly Surcharge Reports are expressly statutorily exempted from public disclosure. Motion at 2-4 (citing G.L. c. 6A, § 18H(g)). Specifically,

section 18H(g) states that “[n]otwithstanding any general or special law to the contrary, [subscriber or end user information or data provided in accordance with section 18H] shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66, except that aggregated information that does not identify or effectively identify specific subscriber or end user information or data may be made public.” G.L. c. 6A, § 18H(g). The DTC determines that the Monthly Surcharge Reports are specifically exempted from public disclosure by statute, and therefore are not public records.³ Accordingly, the DTC will protect the Monthly Surcharge Reports from public disclosure, will limit access to the Monthly Surcharge Reports to authorized staff solely for the purposes of this proceeding, and will provide notice to the 911 Department if the DTC receives a third party public records request for the Monthly Surcharge Reports.⁴ The DTC does not produce information in response to a public records request that it has determined to be subject to confidential treatment unless otherwise directed by the supervisor of records or a court of lawful jurisdiction in accordance with G.L. c. 66, § 10 and 950 C.M.R. §§ 32.00-32.09.

III. ESTABLISHMENT OF AN INTERIM SURCHARGE

In the Petition, the 911 Department provides actual and projected revenue and expense data for the provision of E911 services, grant programs, and disability access programs from FY2014 through FY2016 to support its proposed \$1.25 surcharge for the period of July 1, 2015 through June 30, 2016. Petition at Exh. A, Exh. B. The 911 Department’s revenue data consist of the actual revenues generated by the surcharge for FY2013 and FY2014 and projected

³ As a result, the DTC need not conduct an analysis under G.L. c. 25C, § 5.

⁴ In the event the DTC receives a third party public records request for the Monthly Surcharge Reports, the DTC leaves it to the 911 Department in such instances to notify any affected third parties that the 911 Department deems appropriate.

revenues generated by the current \$0.75 surcharge for FY2015 and the proposed \$1.25 surcharge for FY2016. *Id.* The actual and projected total funds for each fiscal year are calculated by adding the beginning fund balance and net revenue, which is derived by multiplying the surcharge by the number of subscribers or end users and subtracting a one percent administrative fee and a two percent uncollectible revenue rate, on a monthly basis, and adding actual or estimated interest earned on the portion of the E911 Fund that is invested. *See id.* at 8-9. Based on these actual and projected revenues and expenditures, the 911 Department proposes to adjust the surcharge to \$1.25 from July 1, 2015, to June 30, 2016, with a reduction to \$1.00, effective July 1, 2016, to provide for expenses associated with 911 services, grant programs, and disability access programs. *Id.* at 1. For the reasons set forth below, the DTC determines that the appropriate course of action is to establish an interim surcharge of \$1.25 for effect on July 1, 2015, pending completion of the DTC's investigation in this proceeding.

The DTC has explicit authority to establish an interim surcharge “[f]or the purposes of continuity of service . . . to allow for the collection of funds to operate the programs identified in 220 CMR 16.00.” 220 C.M.R. § 16.03(5); *see also* G.L. c. 6A, § 18H(b); *Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.C. 07-7, *Interim Order* (Nov. 30, 2007) (“07-7 *Interim Order*”); *Investigation by the Dep’t of Pub. Utils. on its own motion as to the propriety of the rates & charges set forth in the following tariffs: M.D.P.U. Nos. 10 & 15 filed with the Dep’t on Dec. 31, 1996, to become effective Jan. 30, 1997* [*Pub. Access Smartline*

Serv.], & *M.D.P.U. No. 10* filed Jan. 24, 1997, to become effective Feb. 23, 1997 [elimination of coin rate for local calls] by *New England Tel. & Tel. Co. d/b/a NYNEX*, D.P.U. 97-18, *Order* (Apr. 14, 1997) (permitting a rate increase to go into effect before the completion of a full investigation); 220 C.M.R. § 16.03(4). The interim surcharge must be based on estimated reasonable, customary, or necessary program costs, and estimated subscriber or end user data. 220 C.M.R. § 16.03(5). After establishing an interim surcharge, the DTC must review and adjust the level of the interim surcharge when it is able to complete its investigation. *See id.*

An interim surcharge for effect on July 1, 2015, subject to adjustment pending the DTC's completion of its investigation in this proceeding, is necessary given the filing date of the Petition and the hearing date in this proceeding, coupled with the petitioned-for effective date of the 911 Department's proposed adjustment to the surcharge. The Petition was filed on March 20, 2015, an evidentiary hearing was held on May 1, 2015, and the Petition requested an effective date of July 1, 2015, for the proposed adjusted surcharge. Petition at 1; Tr. And to implement a surcharge adjustment—if such adjustment is determined to be necessary to fund prudently incurred expenses associated with 911 services—for the requested effective date of July 1, 2015, the DTC would need to issue a Final Order in this proceeding by June 1, 2015, in order to provide communication service providers adequate time to prepare and provide notices of a surcharge adjustment to customers and to modify their billing systems to implement the adjusted surcharge. *See 07-7 Interim Order* at 6. Given this limited time period, the DTC does not have sufficient time to fully investigate the Petition in order to determine whether to grant it with respect to the surcharge. Accordingly, establishment of an interim surcharge for effect on July 1, 2015, provides communication service providers sufficient time to prepare the necessary

customer notices and to modify their billing systems while also providing the DTC the additional time necessary to determine whether the proposed surcharge adjustments are necessary to fund E911 services in the long term.

The DTC determines that the proposed surcharge level of \$1.25 is necessary on an interim basis, subject to possible adjustment when the DTC completes its investigation. The DTC has conducted an initial review of the 911 Department's actual and projected revenue and expense data provided in this proceeding. The DTC makes an initial determination that the proposed \$1.25 surcharge is based on estimated program costs necessary for the provision of E911 services, grant programs, and disability access programs, including the implementation of NG 911, as well as estimated subscriber or end user data.⁵ *See* 220 C.M.R. § 16.03(5). The 911 Department states throughout this proceeding that a \$1.25 surcharge is necessary to meet its statutory obligations in FY2015 and FY2016, particularly with respect to the implementation of NG 911. *See, e.g.,* Petition at 2, 7, 9, 22; DTC IR 1-2; DTC IR 1-4; DTC RR 1-9. Indeed, the majority of the 911 Department's proposed increase in projected FY2015 expenditures is the result of NG 911, the implementation of which is statutorily-mandated. *See* G.L. c. 6A, § 18B(h); Petition at 18-20, Exh. A. In addition, while NG 911 is being deployed, it will be necessary for the 911 Department to maintain two 911 systems, a substantial undertaking. *See* Petition at 17-18, 24. In order to ensure continuity of 911 services during this process, and to ensure that NG 911 remains on track to be fully operational throughout the Commonwealth by June 30, 2016, the DTC determines that the establishment of an interim surcharge of \$1.25 is necessary. Accordingly, the DTC makes a preliminary determination that a \$1.25 interim

⁵ The statutory definition of NG 911 is "an enhanced 911 system that incorporates the handling of all 911 calls and messages, including those using IP-enabled services or other advanced communications technologies in the infrastructure of the 911 system itself." G.L. c. 6A, § 18A.

surcharge is based on estimated costs necessary for the provision of E911 services. *See* 220 C.M.R. § 16.03(5). At the conclusion of its investigation, however, the DTC will determine whether a \$1.25 surcharge collects more or less revenue than is needed for the 911 Department to fulfill its statutory obligations, and may adjust the surcharge level if necessary. *See id.*

The DTC determines that establishing an interim surcharge of \$1.25 is preferable to allowing the current \$0.75 surcharge to remain in effect until the DTC completes its investigation next month. As noted above, a \$1.25 surcharge appears necessary, at least on an interim basis, and the DTC finds little reason to delay implementation of an interim surcharge reflecting the requested adjustment while the DTC completes its full investigation. *Cf.* 07-7 *Interim Order* at 8. The DTC acknowledges that implementing an interim surcharge may have negative consequences. For example, communication service providers may be inconvenienced by multiple billing system modifications and by the need to prepare multiple customer notices as a result of implementing an interim surcharge that may be adjusted after the DTC completes its investigation. In addition, if the final surcharge for FY2016 is different than the interim surcharge, it is possible that some consumer confusion may result from multiple notices and changes to the surcharge. However, the DTC finds that the establishment of a \$1.25 surcharge for effect on July 1, 2015, at this time is reasonable and outweighs any possible inconvenience or confusion that may result. *Cf. id.*

Accordingly, and for the reasons set forth above, the DTC establishes an interim surcharge of \$1.25 per month for effect on July 1, 2015, subject to adjustment pending the completion of the DTC's investigation in this proceeding. All communication service providers shall provide notice to customers of the interim adjustment to the surcharge. Notice shall be

provided through a bill insert, bill message, separate mailing, or similar means as soon as possible and no later than the July 2015 billing cycle. Because requiring 30 days advance written notice to customers of an increase in rates and/or charges, as is usually required, could prevent a July 1, 2015, effective date of the interim surcharge, the DTC hereby waives its 30 day advance written notice requirement in this instance. *See* DTC Industry Notice (Feb. 8, 2002).

IV. ORDER

Accordingly, for the reasons set forth above and pursuant to the DTC's authority in G.L. c. 6A, § 18H(b) and 220 C.M.R. § 16.03(5), it is hereby:

ORDERED: That an interim Enhanced 911 Surcharge for each subscriber or end user whose communication services are capable of accessing and utilizing the enhanced 911 system to recover expenses for the provision of E911 services, grant programs, and disability access programs be established at \$1.25 per month, effective July 1, 2015; and it is

FURTHER ORDERED: That all communication service providers operating in the Commonwealth of Massachusetts shall impose the interim surcharge on each subscriber or end user whose communication services are capable of accessing and utilizing the enhanced 911 system, beginning July 1, 2015; and it is

FURTHER ORDERED: That the interim surcharge of \$1.25 per month shall remain in effect unless adjusted after the DTC completes its full investigation in this proceeding; and it is

FURTHER ORDERED: That all communication service providers shall comply with all other directives contained herein, in accordance with G.L. c. 6A, § 18K; and it is

FURTHER ORDERED: That the State 911 Department's Motion for Confidential Treatment is GRANTED as stated herein.

By Order of the DTC,



Karen Charles Peterson
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5 and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court.